Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

REPLY COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY LLC

Cincinnati Bell Telephone Company LLC ("CBT") submits these reply comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceedings seeking comment on the implementation of the Rural Digital Opportunity Fund ("RDOF"), a new Universal Service Fund ("USF") High Cost support mechanism.[1]

CBT commends the Federal Communications Commission ("Commission") on taking the next steps to ensure every American has access to broadband to meet the ever-increasing needs of modern life. CBT offers these reply comments to help improve the RDOF and ensure the progress that has been made over the last decade in closing the digital divide continues. Specifically, CBT is concerned that consumers in areas where carriers accepted the state-wide offers under the Connect America Fund ("CAF") Phase II funding and deployed "new forward-looking … modern multi-purpose networks," as required by the *USF/ICC Transformation Order* and subsequent implementing orders,[2] will be left behind as other areas upgrade to networks capable of delivering

[1] *See Rural Digital Opportunity Fund; Connect America Fund*, Notice of Proposed Rulemaking, 34 FCC Rcd 6778 (2019) (*NPRM*).

[2] *See Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17725, para. 156 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *see also Connect America Fund*, Report and Order, 28 FCC Rcd 15060, 15060, para. 1 (WCB 2013) (*Phase II Service Obligations Order*);

gigabit speeds. Additionally, CBT believes the Commission must fulfill the statutory goal of supporting the ongoing costs for the "provision, maintenance, and upgrading of facilities and services."[3] This requires continued support to all previous identified USF high-cost areas and, importantly, areas within the CAF Phase II state-wide offers that are no longer eligible for any particular funding mechanism or the newly envisioned RDOF.

I. The Commission Should Include All Locations in Census Blocks Where the Only Provider Furnishing 25/3 Mbps Is the Price Cap Carrier

In adopting the *USF/ICC Transformation Order*, the Commission said the goal of the CAF mechanisms was to provide funding for "robust, scalable broadband" to unserved areas.[4] Specifically, the purpose of CAF Phase II funding was to "use a combination of competitive bidding and a new forward-looking model of the cost of constructing modern multi-purpose networks."[5] The Commission recognized that building modern networks would ultimately prove more cost-effective than supporting incremental build-out of outdated technology like cooper-loop networks providing Digital Subscriber Line ("DSL") Internet that would not be able to support the evolving consumer usage of broadband.[6] In developing the CAF program, the Commission expected carriers to "build robust, scalable networks" that would support future consumer demands for speed, usage, latency, and price.[7] Even at the time of formulating the CAF Phase II state-wide offers, the Commission recognized the need for ongoing support within areas eligible for this CAF

Connect America Fund, Report and Order, 28 FCC Rcd 7211, 7211, 7221-22, paras. 1, 27 (WCB 2013) (*Phase II Challenge Process Order*).

[3] 47 U.S.C. § 254(e).

[4] *USF/ICC Transformation Order*, 28 FCC Rcd. at 17712, para. 127.

[5] *Id.* at 17725, para. 156.

[6] *Id.* at 17726, para. 162.

[7] *Id*.

support. The Commission expected at the conclusion of the funding term to make additional CAF support available on a going-forward basis and possibly through competitive bidding.[8]

Throughout the CAF Phase II state-wide implementation process, the Wireline Competition Bureau ("Bureau") restated the Commission's preference for robust, scalable broadband delivered over "modern multi-purpose networks."[9] This is not surprising, as the Commission envisioned that CAF Phase II funding would be used to deploy fiber-based networks. The model used to determine CAF Phase II state-wide offer funding, the Connect America Cost Model ("CAM"), used a green-field fiber to the premise ("FTTP") architecture to model both the cost to serve consumers and the associated USF support.[10] In choosing to model a green-field FTTP network build, the Bureau found that the costs to deploy a fiber-based or a copper-based network are essentially the same, but fiber networks offer significant savings over time as the carrier can more readily upgrade the network to match growing consumer demand.[11] Going even further, the Bureau stated, "if an efficient carrier were to design a new wireline network today, it would be an all Internet protocol ("IP") fiber network, not a circuit switched copper network, because such a network would be cheaper and more scalable over time."[12] The goal of CAM and the CAF Phase II state-wide offers was to ensure robust, scalable networks that could more easily evolve and upgrade to growing broadband demands. The intent was to deploy fiber networks to

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[8] *Id.* at 17729-30, para. 172.

[9] *Phase II Service Obligations Order*, 28 FCC Rcd at 15060, 15065, paras. 1, 16; *Phase II Challenge Process Order*, 28 FCC Rcd at 7211, 7221-22, paras. 1, 27.

[10] *Connect America Fund et al.*, Report and Order, 28 FCC Rcd 5301 (WCB 2013) (*2013 Model Order*).

[11] *Id.*, at 5315-16, para. 33.

[12] *Id.*

achieve this goal and both the Commission and the Bureau clearly stated "efficient" and "effective" providers would deploy FTTP with CAF Phase II funding.[13]

However, the RDOF's proposed criteria for eligible areas would effectively exclude the areas where price cap carriers deployed the FTTP networks the Commission incented them to build. Specifically, the NPRM proposes that "census blocks in which the price cap carrier receiving model-based support is the only terrestrial provider reporting the deployment of 25/3 Mbps broadband service in that block" would be eligible for RDOF Phase I, but that "[l]ocations reported as served by 25/3 Mbps service in the [High Cost Universal Broadband ("HUBB")] would be considered served [and therefore ineligible for support] for purposes of the Rural Digital Opportunity Fund."[14] While the current HUBB reporting only captures the deployment obligations for the specific funding mechanism, here 10/1 Mbps for CAF Phase II state-wide offer recipients, the Commission proposes an additional reporting obligation to capture areas where the price cap carrier has deployed 25/3 Mbps service.[15] In CBT's experience and as confirmed by other commenters, this limitation on eligibility would eliminate price cap areas currently served by FTTP networks.[16]

The Commission should reconsider this limited eligibility and allow all locations in census blocks included in the CAF Phase II state-wide offers to be eligible for RDOF Phase I. The limitation punishes price cap carriers that *listened* to the Commission's instructions and deployed FTTP networks. As the Commission correctly predicted, FTTP networks proved to be far more scalable than copper-based networks. While advancements in DSL technologies allow for

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[13] *Id.*, at 5315-16, para. 33, fn. 64.

[14] *NPRM* at para. 49.

[15] *Id.*

[16] USTelecom Comments at 41-42; ITTA Comments at 27-28.

networks to scale upwards of 20/1 Mbps, fiber-based networks can and do achieve gigabit speeds. In general, locations where FTTP networks have been deployed with CAF Phase II funding, are capable of receiving 25/3 Mbps by design. Now, the proposed rules for RDOF would remove these areas from the auction with no other funding available to provision, maintain, and upgrade these networks in high-cost areas. This would establish a perverse incentive where price cap carriers that chose to upgrade existing cooper infrastructures to meet their CAF Phase II funding obligations remain eligible for RDOF support to further upgrade or deploy FTTP networks; while price cap carriers who followed Commission instructions and deployed FTTP networks are left with no opportunity to receive similar funding to further upgrade their networks. Carriers receiving RDOF funding under these terms would get a clear message *not* to invest in FTTP technology, since doing so would undoubtedly terminate their eligibility for any future phase of RDOF or a successor program.

It is more equitable and in line with the Commission's goals for CAF Phase II funding to allow all locations in census blocks where the only carrier providing 25/3 Mbps service is a price-cap carrier that received CAF Phase II state-wide offer funding to be eligible in the RDOF auction. Importantly, this balances the RDOF's goal to deploy above-baseline or gigabit service while maintaining cost-effective support mechanisms.[17] It is wholly unequitable to allow some price cap carriers that ignored the Commission's previous encouragement to build fiber and instead chose to extend their copper networks to now receive further support, while carriers that did build fiber networks would be barred from funding to upgrade these networks to the robust, gigabit-capable infrastructure the Commission hopes to promote with RDOF support.

[17] *NPRM* at para. 14.

CBT supports the Commission making all CAF Phase II state-wide offer areas eligible for RDOF support in exchange for delivering the higher performance tiers (*e.g.* above-baseline and gigabit).[18] This approach better aligns with the decade of CAF policy and ensures equal incentives nationally for carriers to deploy higher performance networks. Further, it also makes the Commission's goal to incentivize deployment of higher performance tiers more achievable. This approach leverages the CAF Phase II state-wide funding to lower the overall cost to deploy 100 Mbps or gigabit service in high-cost areas as these areas have FTTP networks in place that would only need upgrades rather than deploying entirely new fiber. The Commission's current proposal would abandon this prior investment and continue to provide support in areas where carriers have chosen not to deploy fiber. The areas being discussed were and remain high-cost and thus these consumers will be left behind if the Commission cuts off funding. Choosing to incorporate all CAF Phase II statewide-offer areas and allow carriers to bid to provide the above-baseline and gigabit performance tiers keeps the with the Commission's CAF precedent and prior promise to continue to provide funding in areas where carriers accepted the state-level commitments.[19]

II. The Commission Must Continue to Provide Support for Maintenance and Ongoing Service Costs in Areas Where There is No RDOF Winner

Alternatively, if the Commission does not allow for RDOF funding in areas where the only carrier providing 25/3 Mbps service is a price-cap carrier that received CAF Phase II state-wide offer funding, the Commission must provide alternative USF support for the ongoing costs to provision, maintain, and offer service in these high-cost areas. Further, not all areas currently served by a price cap carrier receiving CAF Phase II state-wide offer support will be won at the

[18] *See id.* at para. 25.

[19] *Connect America Fund, et al.*, Report and Order, 29 FCC Rcd 15644, 15656, para. 31 (2014) (*December 2014 CAF Order*).

auction. Whether due to the limited eligibility of these areas or bidding decisions made by RDOF auction participants, there will be high-cost rural areas where the only CAF funding expires at the end of 2020. When the Commission established the CAF Phase II state-wide offers it specifically said it expected to adopt an additional funding mechanism through competitive bidding upon expiration of the five year funding term.[20] The Commission also noted the ongoing requirements of price cap carriers "to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America, in exchange for ongoing CAF Phase II support."[21] The Commission routinely recognizes "flash cuts" to support would harm consumers and carriers.[22] The assumption of ongoing support for monthly operating expenses is a fundamental component of the CAM that the Commission used to determine CAF Phase II state-wide support.[23] Explicitly, CAM provides estimates and provides support for "*the full average monthly cost of operating and maintaining an efficient, modern network*," and includes both capital and *operating costs*.[24] The Commission sought to ensure carriers would be reimbursed for the variety of expenses to maintain a modern, efficient network, including: "network operation expenses (both plant-specific, i.e., outside plant by cable type, poles, conduit, and circuit/transport, and non-plant-specific), general and

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[20] *NPRM* at para. 100, fn. 190 (*citing USF/ICC Transformation Order*, 26 FCC Rcd at 17726-27, para. 163).

[21] *Id.*

[22] *USF/ICC Transformation Order*, 26 FCC Rcd at 17752, para. 242; *December 2014 CAF Order*, 29 FCC Rcd at 15656, para. 32.

[23] *2013 Model Order*, 28 FCC Rcd at 5307-08, paras. 11, 15.

[24] *Id.*

administrative expenses, customer selling and marketing expenses, and bad debt expense."[25] Needless to say, operating expenses do not suddenly go away upon completion of a network upgrade, whether to 10/1, 25/3, or gigabit-level service; they continue into the future.

The indefinite requirement to provide service in these areas was supported by the Commission's stated plan to conduct a subsequent competitive bidding process for these areas and providing support for the ongoing operating expenses of maintaining these networks. Contrary to the Commission's statements in the RDOF NPRM, the limited support contemplated in the CAF Phase II state-wide offers was expected to be replaced with an auction for these areas.[26] However, the RDOF's proposed eligible areas expressly contemplate stopping funding for areas where price cap carriers received state-wide funding and deployed 25/3 Mbps broadband.[27]

The incongruity between the Commission's proposed CAF Phase III at the time of the CAF Phase II state-wide offers and the currently proposed RDOF auction leaves price cap carriers with high-cost areas that will not have any USF support. Without further action from the Commission, price cap carriers will have to continue to provide service in these high-cost areas pursuant to the obligations of the CAF Phase II state-wide offers without funding. This is not only inconsistent with the Commission's *USF/ICC Transformation Order* and subsequent Bureau implementing orders, but also inconsistent with the statutory mandate to provide sufficient support for the provision, maintenance and upgrading of facilities used for Universal Service.[28] Multiple

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[25] *Id.* at 5308, para. 15, fn. 30; *see also Connect America Fund; High-Cost Universal Service Support*, Report and Order, 29 FCC Rcd 3964, 4012-18, paras. 110-23 (WCB 2014) (finalizing the CAM estimates for operating expenses).

[26] *USF/ICC Transformation Order*, 26 FCC Rcd at 17726-27, para. 163; *December 2014 CAF Order*, 29 FCC Rcd at 15656, para. 32.

[27] *NPRM* at para. 100.

[28] 47 U.S.C. § 254(b)(5), (e).

commenters point out the potential for an "unfunded mandate" to provide service without the associated support.[29]

The Commission must either establish a "sufficient" USF support mechanism to offset the costs associated with continuing to provide broadband that is reasonably comparable to urban markets or relieve price cap carriers from the obligation to continue to provide such a service. The economic realities of providing service in the remote and rural areas contained in the CAF Phase II state-wide offers do not afford price cap carriers the ability to continue to provide service without the assistance of USF support. As detailed above, the Commission could fulfill this obligation by having RDOF funding support the upgrade of these facilities to above-baseline or gigabit performance tiers.[30] Alternatively, the Commission could enact a support mechanism to offset the ongoing maintenance costs for areas that will not be included in RDOF, but previously received High Cost support. Absent these actions, the Commission must relieve price cap carriers from the obligation to continue to provide service.

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[29] USTelecom Comments at 29-30; ITTA Comments at 29-32; Windstream Comments at 23-24; Frontier Comments at 18-22.

[30] *See supra* Section I.

III. Conclusion

For the foregoing reasons, CBT respectfully requests the Commission consider these proposals in its forthcoming RDOF auction proceeding.

Respectfully submitted,

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